

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

HOWARD E. HARMON,

Plaintiff,

v.

ALEXANDER L. DOWNING, et al.,

Defendants.

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No. 4:23-cv-01105-SEP

MEMORANDUM AND ORDER

This matter is before the Court for review pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. Review of the record indicates that Defendant Unknown Boyer has not been served with process.

Plaintiff filed this action on September 1, 2023, naming Boyer among the Defendants. On September 13, 2024, the Court directed the Clerk to serve process on Defendant Boyer pursuant to the service agreement the Court maintains with the Missouri Attorney General's Office. The Missouri Attorney General's Office declined to waive service as to Boyer, however, because he was no longer employed by the Missouri Department of Corrections. Counsel subsequently provided the Court with Boyer's last known address, which was a post office box, and the Court directed the Clerk to effectuate service of process there. On December 31, 2024, service was returned unexecuted for Boyer. The return of service indicated that Boyer was not a current employee at the Potosi Correctional Center and service could not be made at the post office box.

Federal Rule of Civil Procedure 4(m) provides:

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

It has been more than 90 days since Plaintiff filed his Complaint naming Boyer as a Defendant, and the Court has attempted service twice without success. Rule 4(m) of the Federal Rules of Civil Procedure provides that the Court, after notice to a plaintiff, shall dismiss an action against any defendant upon whom service has not been timely made. In light of Plaintiff's status as a *pro se* and *in forma pauperis* litigant, he will be given the opportunity to


provide the Court with adequate information such that Boyer may be served under Rule 4(m). Plaintiff's response to the Court is due no later than 21 days from the date of this Order.

Accordingly,

IT IS HEREBY ORDERED that, no later than 21 days from the date of this Order, Plaintiff shall provide the Court with adequate information such that Defendant Unknown Boyer may be served with process.

IT IS FURTHER ORDERED that, in the absence of good cause shown, Plaintiff's failure to timely respond to this Order shall result in the dismissal of Defendant Boyer from this cause of action, without prejudice, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

Dated this 8th day of April, 2025.



SARAH E. PITLYK
UNITED STATES DISTRICT JUDGE